

ORIGINAL



0000095499

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

2009 APR 16 P 3:09

DOCKETED

APR 16 2009

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

NW

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKET NO. W-01445A-03-0559

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY TO EXTEND
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN CASA GRANDE, PINAL
COUNTY, ARIZONA.

**PROCEDURAL ORDER RULING ON
JOINT MOTION FOR SUBMISSION
OF MATTER ON THE PLEADINGS**

BY THE COMMISSION:

On July 30, 2007, the Arizona Corporation Commission ("Commission") issued Decision No. 69722. Decision No. 69722 extended the deadline for compliance with the conditions of Decision No. 66893 (April 6, 2004) to July 30, 2007, and ordered that for purposes of compliance, Arizona Water Company ("AWC") has fulfilled the conditions set forth in Decision No. 66893 for an extension to its Certificate of Convenience and Necessity ("CC&N"). Decision No. 69722 found that there may not be a current need or necessity for water service in the portions of the extension area that are owned by Cornman Tweedy 560, LLC ("Cornman"); that Cornman does not wish to have its property included in AWC's CC&N at this time; and that these issues bear further examination and may have some relevance to the best interests of the area ultimately to be served. Decision No. 69722 therefore returned this case to the Hearing Division for further proceedings regarding whether AWC should continue at this time to hold a CC&N for the area depicted in Exhibit B to that Decision (the Cornman extension area).

On September 18, 2008, a procedural order was issued setting the hearing ordered by Decision No. 69722 to commence on December 15, 2008.

On December 15, 2008, the hearing convened as scheduled, but due to the unavailability of counsel for Arizona Water on that date, the parties agreed to continue the hearing to commence on January 29, 2009.

1 On January 23, 2009, Cornman filed a Motion to Continue Hearing Date.

2 On January 26, 2009, the Motion to Continue Hearing Date was granted, and a procedural
3 conference was set to convene on February 6, 2009, for the purpose of determining and scheduling an
4 appropriate hearing date.

5 On February 6, 2009, a procedural conference convened as scheduled. Arizona Water,
6 Cornman, and the Commission's Utilities Division ("Staff") appeared through counsel. Counsel for
7 Arizona Water and Cornman jointly proposed that the hearing be vacated and that a recommended
8 order be submitted to the Commission based not on an evidentiary hearing, but on the prefiled
9 testimony docketed in anticipation of the hearing. At the procedural conference, Arizona Water and
10 Cornman were directed to make their request in writing, keeping in mind that Arizona Water had
11 filed a motion requesting that certain portions of Cornman's prefiled testimony be stricken, and that
12 the motion had been denied based in part on the premise that Cornman should have the opportunity,
13 at hearing, to develop its factual positions.

14 On March 6, 2009, Cornman and Arizona Water jointly filed a Motion for Submission of
15 Matter on the Pleadings ("Motion"). The Motion proposed a procedure for processing the application
16 without a hearing. The jointly proposed procedure included admission of the prefiled testimony into
17 evidence subject to specific objections of the parties either previously stated in the pleadings, or to be
18 raised in their respective closing briefs.

19 The procedure proposed by Cornman and Arizona Water in their joint March 6, 2009 filing is
20 reasonable at this time. However, the parties should remain on notice that at any time either prior to
21 the submission of a recommended order to the Commission, or thereafter, this matter may be set for
22 hearing if deemed necessary by the Hearing Division or the Commission.

23 Objections to prefiled testimony should be raised by the parties in closing briefs, whether the
24 objection has been previously raised or not. Objections in the briefs may refer to arguments in prior
25 pleadings in lieu of restating the arguments, but the objection itself must be raised in the brief in order
26 to be considered.

27 IT IS THEREFORE ORDERED that the Joint Motion of Cornman Tweedy 560, LLC and
28 Arizona Water Company for Submission of Matter on the Pleadings is hereby granted.

1 IT IS FURTHER ORDERED that the **hearing** in this matter **currently continued to a future**
2 **date to be determined** is hereby **vacated**.

3 IT IS FURTHER ORDERED that this matter may be re-set for hearing at any time if deemed
4 necessary by the Hearing Division or the Commission.

5 IT IS FURTHER ORDERED that the prefiled testimony previously docketed by the parties in
6 this matter is hereby admitted into evidence subject to the specific objections of the parties raised in
7 their closing briefs.

8 IT IS FURTHER ORDERED that Cornman Tweedy 560, LLC shall file its initial closing
9 brief no later than May 15, 2009.

10 IT IS FURTHER ORDERED that Arizona Water Company and the Commission's Utilities
11 Division shall file their responsive closing briefs no later than June 19, 2009.

12 IT IS FURTHER ORDERED that Cornman Tweedy 560, LLC shall file its reply closing brief
13 no later than July 17, 2009.

14 IT IS FURTHER ORDERED that the parties may cite in their closing briefs to the pleadings
15 and underlying record in this docket.

16 IT IS FURTHER ORDERED that the parties shall raise any objections to specific portions of
17 prefiled testimony in their closing briefs.

18 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
19 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
20 *pro hac vice*.

21 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
22 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
23 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
24 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
25 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
26 Administrative Law Judge or the Commission.

27 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
28 Communications) continues to apply to this proceeding and shall remain in effect until the

Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the time periods specified herein shall not be extended pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

Dated this 16th day of April, 2009.


TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

The foregoing was mailed/delivered this 16th day of April, 2009 to:


Robert W. Geake
ARIZONA WATER COMPANY
Post Office Box 29006
Phoenix, AZ 85038-9006

Steven A. Hirsch
BRYAN CAVE, LLP
Two North Central Avenue, Suite 2200
Phoenix, AZ 85004-4406

Jeffrey W. Crockett
SNELL & WILMER
400 East Van Buren Street
Phoenix, AZ 85004-2202

Janice Alward, Chief Counsel
Charles Hains, Staff Attorney
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

By: 
Debra Broyles
Secretary to Teena Wolfe